IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Sales Tax Revision No. 41 of 2003
(Old No. 821 of 1991)

The Commissioner,
Sales tax
U.P. Lucknow ...Applicant/Revisionist

Versus

The Executive Engineer, P.W.D.
Pithoragarh .....Respondent

Mr. Pitamber Maulkhi learned Addl. Advocate General for the revisionist.
Mr. Pankaj Purohit learned counsel for the respondent.

Hon'ble J.C. S. Rawat, J.

1. This revision, referred under Section 11 of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 20.02.1991, passed by the Sales Tax Tribunal, Haldwani Bench, Haldwani.

2. Brief facts of the case are that the assessee is the P.W.D. The assessee had supplied cement to its contractor during the year 1982-83 for the completion of the contract work. According to the assessee, the payments were received in respect thereof and no taxable turnover was admitted. The case pertains to the assessment year 1982-83. But, the Assessing Authority had fixed the tax upon the turnover of the assessee while treating the supply of cement as 'sales'. Feeling aggrieved by this, the assessee preferred an appeal under section 9 of the U.P. Sales Tax Act and the appeal was dismissed by the Asstt. Commissioner (Judicial), Sales Tax. Feeling aggrieved by the said order, the assessee again preferred an appeal before the Sales Tax Tribunal under section 10 of the Sales Tax Act. The learned Tribunal allowed the appeal holding

that the assessee was not liable to pay any tax in respect of the supply made to its contractor. The Sales Tax Department has preferred this revision before the Allahabad High Court from where it has been received by transfer under the U.P. Reorganization Act, 2000, for its disposal.

3. The question of law raised in the revision is as follows:

> *"Whether on the facts and circumstances of the case, the Sales Tax Tribunal was legally justified to hold that the supply of cement made to P.W.D. did not amount to sale despite the ruling to the contrary by the Hon'ble Supreme Court in* ***N.M. Goel & Co. Vs. Sales Tax Officer Rananand Gaon and another 1990 UPTC 865 S.C.?****"*

4. This learned counsel for the Sales Tax Department has relied upon the judgments of the Hon'ble Supreme Court in **1989(1) SCC p/335, M/s N.M. Goel and Co., Vs. Sales Tax Officer, Rajnandgaon and Karyapalak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer & others reported in 2005 (Vol.37) Sales Tax Journal p/1.**

5. The Uttaranchal High Court has delivered a judgment in **Trade Tax Revision No. 55/2006 Sri Akhil Bharati Maheswari Seva Sadan Vs. The Commissioner Trade Tax** dated 25.05.2006, in which it has been held that the transactions between the assessee and its contractor come within the meaning of the word 'sale' under the provisions of 2(h) of the Act and the question was answered in favour of the Sales Tax Department.

6. In view of the foregoing discussion, the present revision is squarely covered by the aforesaid judgments. Therefore, the transactions between the assessee and its contractor come within the meaning of the word 'sale' under the provisions of 2(h) of the Act. Therefore, the revision is

disposed of in terms of the aforesaid judgments and the question is answered in favour of the Sales tax Department.

(J. C. S. RAWAT, J.)

Dated 17.07.2006
LSR